

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2732 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARSHBHAI THAKARLAL ACHARYA

Versus

DY COLLECTOR

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Appearance:

MR PM VYAS for Petitioners  
NOTICE NOT RECD BACK for Respondent No. 1  
MR AB VAYS ASSTT.GOVERNMENT PLEADER  
for Respondent No. 2

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 06/08/97

ORAL JUDGEMENT

Heard Mr. P.M.Vyas for the petitioner and Mr.Apurv Vyas, AGP for respondents. The petitioner no.1 is present in court. This petition has already been admitted on 5th May, 1997 and the status quo with respect to the land involved in this litigation was directed to be maintained. Mr. P.M.Vyas points out that proceeding

leading to the impugned order dt. 29/10/1991 was initiated against Thakorbhai Amrutbhai, the father of the petitioners, after this Thakorbhai had died. Thakorbhai died on 3/8/1990. Although, the proceeding had been initiated by the A.L.T. and Mamlatdar, by issuing notice on 31/12/1986, the matter was not concluded at that stage and it came to be referred to the Deputy Collector under Sec.65 of the Bombay Tenancy and Agricultural Lands Act, 1948. The site panchnama has obviously been prepared subsequent to the death of this Thakorbhai in 1991 and thereafter impugned order came to be passed on 29th October, 1991.

2. Mr.P.M.Vyas submits that inasmuch as this proceeding and order is one against a dead person, it is a nullity and though there is a delay in taking up this petition, it is a fit case wherein the order ought to be interfered with.

3. In view of the facts which are stated above, in my view, the petitioners herein who are the son and daughter of deceased Thakorbhai, are required to be heard. Mr.P.M.Vyas states that they are the only heirs of deceased Thakorbhai and there is no other claimant other than the present petitioners for this land. He also states that they will remain present when required by the Deputy Collector, if the proceedings are revived.

4. In my view, the petitioners ought to be given chance of making their submissions before the authority concerned. The impugned order is, therefore, quashed and set aside. Mr. P.M.Vyas agrees and states that if fixed date is informed even today, the petitioners will remain present before the concerned officer and will not ask for any adjournment on any ground whatsoever. Mr. Apurv Vyas states that the Deputy Collector will hear the matter on 28th August, 1997 at 11-00 A.M. in his office situated at Block No.8, Multi-storeyed Building, Gandhinagar.

5. Accordingly impugned order is set aside. The proceeding before the Deputy Collector is revived. For record the Deputy Collector may give notice to the petitioners on their addresses which are given in the cause title of this petition. However, inasmuch as the date of hearing is informed to the petitioner No.1 who is present in the court (and he undertakes to inform the petitioner no.2 on his own), the matter will proceed on 28th August, 1997. The Deputy Collector will decide the matter after hearing both the petitioners in accordance with law in any case by the end of September, 1997. Rule

is made absolute accordingly. There will be no order as  
to costs.

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(ccs)